

BEFORE THE MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION)	
)	
Petitioner,)	
)	
v.)	No. 12-0078 RE
)	
)	
BRIAN P. JOHNSON,)	
)	
Respondent.)	

ORDER OF THE MISSOURI REAL ESTATE COMMISSION
DISCIPLINING THE REAL ESTATE LICENSE OF
BRIAN P. JOHNSON

On or about March 19, 2012, the Administrative Hearing Commission entered its Default Decision in the case of *Missouri Real Estate Commission v. Brian P. Johnson, No. 12-0078 RE*. In that Decision, the Administrative Hearing Commission found that Respondent Brian P. Johnson's real estate license (license no. 2003031955) is subject to disciplinary action by the Missouri Real Estate Commission ("Commission") pursuant to § 339.100.2 (15), RSMo.¹

The Commission has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Default Decision of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the Commission held a hearing on June 13, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the Commission were present throughout the meeting. Further, each member of this Commission has read the Default Decision of the

¹ All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise indicated.

Administrative Hearing Commission. The Commission was represented by Assistant Attorney General Megan Kade Fewell. Respondent, having received proper notice and opportunity to appear, did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the hearing, the Commission issues the following Findings of Facts, Conclusions of Law and Order.

Based upon the foregoing the Commission hereby states:

I.

FINDINGS OF FACT

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. The Commission hereby adopts and incorporates by reference the Default Decision and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Brian P. Johnson, Case No. 12-0078 RE*, issued on March 19, 2012, and the complaint on which it is based, filed on January 18, 2012, in its entirety and takes official notice thereof.

3. The Commission set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion. Respondent failed to appear in person or through legal counsel at the hearing before the commission.

4. This Commission licensed Respondent Brian P. Johnson as a real estate salesperson, license number 2003031955. Respondent's salesperson license was current at all times relevant to this proceeding.

II.

CONCLUSIONS OF LAW

5. This Commission has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The Commission expressly adopts and incorporates by reference the Default Decision issued by the Administrative Hearing Commission dated March 19, 2012, in *Missouri Real Estate Commission v Brian P. Johnson, Case No. 12-0078 RE*, and the complaint on which it is based, and takes official notice thereof, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Default Decision dated March 19, 2012, Respondent's real estate license, number 2003031955, is subject to disciplinary action by the Commission pursuant to § 339.100.2 (10), (15), (16), and (19) RSMo.

8. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

9. Having fully considered all the evidence before the Commission, and giving full weight to the Default Decision of the Administrative Hearing Commission, it is the **ORDER** of the Commission that Respondent, Brian P. Johnson (license no. 2003031955) is hereby placed on PROBATION, for a term not to exceed five (5) years, and must pay a civil penalty of \$250 by certified check made payable to the "Missouri Real Estate Commission" and mail to the Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within sixty days of the date of this Order. Funds received

pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and § 339.205.8, RSMo. The period of probation shall constitute the “disciplinary period.” The period of probation shall end with receipt of the civil penalty. However, failure to pay the civil penalty within sixty days of the date of this Order shall constitute a violation of the disciplinary period and shall be cause for additional discipline.

10. The additional terms and conditions of the disciplinary period are as follows:

- A. Respondent shall keep the MREC apprised at all times, in writing, of his current address and telephone number at each place of residence and business. Respondent shall notify the Commission within ten (10) days of any change in this information.
- B. Respondent shall timely renew his license and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain his license in a current and active state.
- C. Respondent shall maintain full compliance with all provisions of Chapter 339, RSMo, and all rules and regulations promulgated by the MREC.
- D. Respondent shall appear in person for interviews with the MREC or its designee upon request.

11. Upon the expiration and successful completion of the disciplinary terms, Respondent’s license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondent has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Respondent’s real estate broker license.

12. The MREC retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to


amend this Order or impose further disciplinary or appropriate action at the discretion of the MREC. No order shall be entered by the MREC pursuant to this paragraph without any required notice and opportunity for a hearing before the MREC as provided by chapter 536, RSMo.

13. Any failure of Respondent to comply with any condition of discipline set forth herein constitutes a violation of this Order.

14. The MREC will maintain this Order as an open record of the MREC as provided in Chapters 339, 610, and 324, RSMo.

SO ORDERED, EFFECTIVE THIS 9th DAY OF July, 2012.

MISSOURI REAL ESTATE COMMISSION


Janet Carder, Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE
COMMISSION,

Petitioner,

vs.

BRIAN P. JOHNSON,

Respondent.

No. 12-0078 RE

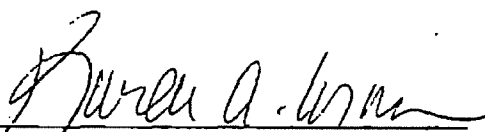
DEFAULT DECISION

On January 18, 2012, Petitioner filed a properly pled complaint seeking to discipline Respondent. We served Respondent with a copy of the complaint and our notice of complaint/notice of hearing by certified mail before February 6, 2012.¹

More than thirty days have elapsed since Respondent was served. Respondent has not filed an answer or otherwise responded to the complaint. On March 13, 2012, Petitioner filed a motion to enter a default decision.

In accordance with § 621.100.2,² we enter a default decision against Respondent establishing that Petitioner has cause to discipline Respondent under § 339.100.2(10), (15), (16) and (19), RSMo. This default decision shall become final and will not be set aside unless a motion is filed with this Commission within thirty days of the date of this order establishing good cause for not responding to the complaint and stating facts constituting a meritorious defense.

SO ORDERED on March 19, 2012.


KAREN A. WINN
Commissioner

¹There is no date of delivery on the certified receipt, but it was filed with us on February 6, 2012.

²RSMo 2000, as amended by H.B. No. 265, effective August 28, 2011.

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JAN 18 2012

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI REAL ESTATE
COMMISSION
3605 Missouri Blvd.
P.O. Box 1339
Jefferson City, MO 65102-1339,

Petitioner,

v.

BRIAN P. JOHNSON
523 Bellsworth Drive
St. Louis, Missouri 63125
Telephone: (314) 440-1401

Respondent.

Case No. 12-0078 RE

COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC"), by and through the Missouri Attorney General's Office, states for its cause of action as follows:

1. The MREC is an agency of the state of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2011, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo Supp. 2011, relating to real estate agents and real estate brokers.

2. Brian P. Johnson ("Johnson") holds a real estate salesperson license, no. 2003031955. Johnson's license was at all relevant times current and active.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to §§ 621.045 and 339.100, RSMo Supp. 2011.

4. On January 27, 2011, Johnson wrote check no. 2378 in the amount of fifty dollars to the MREC for the fee associated with transferring his license. On February 9, 2011, that check was returned to the MREC marked with the return reason of "Refer to Maker".

5. By letter dated March 8, 2011, sent to Johnson's address at 523 Bellsworth Drive, St. Louis, Missouri, MREC requested that a replacement fee be issued and a delinquent fee be paid.

6. As of March 8, 2011, Johnson's address registered with the MREC was 523 Bellsworth Drive, St. Louis, Missouri 63125.

7. Johnson did not respond, in writing or otherwise, to the MREC's March 8, 2011, letter within 30 days.

8. By certified letter dated April 15, 2011, sent to Johnson's address at 523 Bellsworth Drive, St. Louis, Missouri, MREC requested that a replacement fee be issued and a delinquent fee be paid.

9. As of April 15, 2011, Johnson's address registered with the MREC was 523 Bellsworth Drive, St. Louis, Missouri 63125.

10. Johnson did not respond, in writing or otherwise, to the MREC's April 15, 2011, certified letter within 30 days.

11. As of the filing of this complaint, Johnson has not provided replacement funds for check no. 2378, including the transfer/status change fee and/or bad check replacement fee owing to the MREC.

12. Johnson's attempt to pay his transfer/status change fee with check no. 2378

when insufficient funds were available in his bank account to cover the check constitutes a false and/or fraudulent representation, and/or fraud, and/or deceit.

13. Chapter 339.100.2 RSMo, which sets forth the grounds for discipline, states in relevant part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(10) Obtaining a certificate or registration of authority, permit or license for himself or herself or anyone else by false or fraudulent representation, fraud or deceit;

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

14. Because Johnson has attempted to obtain a certificate or registration of license for himself by false or fraudulent representation, fraud or deceit by submitting a bad check for payment of dues, cause exists to discipline Johnson's license pursuant to § 339.100.2(10), RSMo Supp. 2011.

15. Rule 20 CSR 2250-8.170, states:

(1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

16. Because Johnson has failed to respond in writing to the MREC's written requests or inquiries, in violation of 20 CSR 2250-8.170(1), cause exists to discipline Johnson's license pursuant to § 339.100.2(15), RSMo Supp. 2011.

17. Rule 20 CSR 2250-5.010(1) regarding the payment of fees states:

(1) All fees shall be paid by personal check, cashier's check or money order made payable to the Missouri Real Estate Commission. All fees are nonrefundable.

18. Rule 20 CSR 2250-5.020(5)(A) requires the payment of the transfer/status change fee and states:

(5) The following fees shall be paid for the appropriate transactions:

(A) Transfer/Status Change \$50

19. Because Johnson has failed to pay the transfer/status change fee, in violation of 20 CSR 2250-5.020(5)(A), cause exists to discipline Johnson's license pursuant to § 339.100.2(15), RSMo Supp. 2011.

20. Rule 20 CSR 2250-5.030(1)(B) requires the payment of a bad check replacement fee and states:

(1) The following miscellaneous fees for certain services rendered by the Missouri Real Estate Commission are as follows:

(B) Bad Check Replacement Fee \$25

21. Because Johnson has failed to pay the bad check replacement fee, in violation of 20 CSR 2250-5.030(1)(B), cause exists to discipline Johnson's license pursuant to § 339.100.2(15), RSMo Supp. 2011.

22. Section 339.040.1 RSMo, Supp. 2011 states:

Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

- (1) Are persons of good moral character; and
- (2) Bear a good reputation for honesty, integrity, and fair dealing; and
- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

23. Due to Johnson's actions, he is unable to present satisfactory proof that 1) he is a person of good moral character, 2) he bears a good reputation for honesty, integrity and fair dealing, and 3) he is competent to transact the business of a real estate salesperson in such a manner as to safeguard the interest of the public.

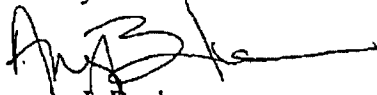
24. Because of Johnson's actions, cause exists to discipline Johnson's license pursuant to § 339.100.2(16), RSMo Supp. 2011.

25. Because Johnson attempted to pay a fee with a bad check and has failed to provide replacement funds for that check or any associated fees, cause exists to discipline Johnson's license pursuant to § 339.100.2(19), RSMo Supp. 2011.

WHEREFORE, Petitioner requests that the Administrative Hearing Commission conduct a hearing in this case pursuant to Chapter 621, RSMo, and issue its Findings of Fact and Conclusions of Law determining that Petitioner may take disciplinary action against the license of Respondent, Johnson, as a real estate salesperson for the violations noted above, and for such other relief as the Commission deems appropriate.

Respectfully submitted,

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